

payment of a poor rate by warrant of distress was a judgment in a criminal cause or matter within section 47 of the Judicature Act 1873 inasmuch as the proceedings before the justices might have ended in imprisonment of the person in default.

In the case of *Woosey v. Woosey*⁽³⁾ McElwaine C.J. was of the opinion that proceedings under sub-section 4 of section 37 of the Straits Settlements Minor Offences Ordinance were criminal and this sub-section is almost identical with the section 362(i) of the Criminal Procedure Code. The learned Chief Justice also referred to the case of *Rex v. Richardson*⁽⁴⁾ where Lord Alverstone in considering the non-payment by a husband to his wife of a weekly sum by way of alimony, ordered to be paid under the Summary Jurisdiction (Married Women) Act 1899, stated:—

... the order committing the man to prison for non payment is in the nature of a criminal conviction, the disobedience of the earlier order being treated as contempt which may be purged by payment.

The decision in the case of *Seaman v. Burley*⁽²⁾ was approved by the House of Lords in the case of *Amand v. Home Secretary and Minister of Defence of Royal Netherlands Government*⁽⁵⁾ where Their Lordships held that the test as to whether a proceeding was a criminal cause or matter depended upon the nature and character of the proceeding and if the matter was one the direct outcome of which might be the trial of the person charged and his possible punishment for an alleged offence the matter was criminal. This latter case was applied in the case of *Rex v. Justices of the Appeals Committee of the Court of London Quarter Sessions*⁽⁶⁾.

Accordingly, I held that the order of the Magistrate dated the 7th of January ordering the appellant to pay \$80 or in default undergo six weeks' imprisonment was an order pronounced by him in a criminal cause or matter.

Having formed this opinion, although sub-section 2 of section 50 of the Court Ordinance, 1948, dealing with civil appeals from Sessions and Magistrates Courts states an appeal shall lie in any proceedings relating to maintenance of wives and children, it seems to me clear that this sub-section can have no application to any criminal cause or matter, and I therefore held that this appeal was properly brought under section 307 of the Criminal Procedure Code. It follows therefore that a signed copy of the record should have been transmitted to the Public Prosecutor under Section 308 of the same Code.

As to the merits of the appeal, I was satisfied that the Magistrate could have come to no other conclusion than he did, namely, that the appellant had wilfully

neglected to comply for no sufficient cause with the order for maintenance made on the 29th of October.

Finally, the order of the 7th of January stated that in default of payment the appellant was to undergo six weeks' civil imprisonment and in section 362(i) quoted above imprisonment of either description means either rigorous imprisonment with hard labour or simple imprisonment without hard labour as defined in section 53 of the Penal Code.

I therefore dismissed the appeal, and as the appellant had paid nothing towards the support of his wife and child since the making of the order, I varied the Magistrate's order to an order for payment by the appellant of \$80 within three days, in default the appellant to serve a term of six weeks' simple imprisonment.

Appeal dismissed.

CHUA AIK v. PUBLIC PROSECUTOR

[A. Cr. J. (Russell J.) April 8, 1949]

[K. L. — Magistrate's Appeal No. 14 of 1949]

Emergency (Registration Areas) Regulations, 1948, reg. 18(1)(a) — Charge of failing to register and obtain an identity card — Mentally deranged person — Plea of guilty.

In this case the appellant was convicted of the offence of failing to register and obtain an identity card under Regulation 18(1)(a) of the Emergency (Registration Areas) Regulations, 1948. He was said to have pleaded guilty and was fined. It appeared that the appellant was a mentally deranged person and that after his son had applied at the correct time for a registration card on behalf of his father, a registration officer went to the appellant's house but was unable to do so owing to the appellant's condition.

Held: in the circumstances, the conviction must be quashed.

Appellant in person.

M. Suffian (D. P. P.) for the respondent.

Russell J. : — The appellant was one of ten persons convicted by the Magistrate at Klang of the offence of failing to register and obtain an identity card under Regulation 18(1)(a) of the Emergency (Registration Areas) Regulations, 1948. The appellant was said to have pleaded guilty at his trial and was fined \$20 and in default was sentenced to seven days' rigorous imprisonment.

The learned Deputy Public Prosecutor, who appeared for the respondent, did not seek to uphold the conviction and called, with the leave of the Court, the Registration Officer, Klang, to give evidence.

This officer stated that the son of the appellant had applied at the correct time for a registration card

on behalf of his father who was mentally deranged, that a registration officer had gone to the appellant's house to register him but that owing to the appellant's condition had been unable to do so.

The Registration Officer also stated that in his view the appellant did not understand the plea of guilty he was alleged to have made at his trial, and that every effort is being made for the appellant to be examined by a doctor with a view to his being certified as a person of unsound mind.

I therefore allowed the appeal and quashed the conviction.

Appeal allowed

**HASSAN BIN ISAHAK
v. PUBLIC PROSECUTOR**

[A. Cr. J. (Pretheroe Ag. C.J., Jobling and Hill JJ.)
June 17, 1948]

[Penang — Criminal Reference No. 1 of 1948]

Criminal Procedure Code (Cap. 21), ss. 139, 176 & 448 — Charge in the alternative for offences contrary to ss. 177 & 181 of the Penal Code — Want of sanction — Whether curable under s. 448 of the Criminal Procedure Code — Plea of autrefois acquit.

Interpretation — Illustration to section.

The appellant in this case was charged in the alternative with committing offences contrary to sections 177 and 181 respectively of the Penal Code and the case originally came up for trial before the District Court Judge at Butterworth on July 24, 1947. After the evidence of the witnesses for the prosecution had been recorded the learned Judge realised that the requirements of section 139 of the Criminal Procedure Code had not been fulfilled. That section provides, *inter alia*, that no Court shall take cognizance of any offence punishable under sections 177 and 181 of the Penal Code except with the previous sanction of the Public Prosecutor or on the complaint of the public servant concerned or of some public servant to whom he is subordinate. In this case the Public Prosecutor had not given his previous sanction and the complaint was not made by the public servant concerned or by a public servant to whom he was subordinate. Before calling on the defence the learned District Court Judge terminated the proceedings and "released" the accused. The sanction of the Public Prosecutor was then obtained and the appellant was again charged in the alternative with committing the same offences as those before the Court on the 24th July. He pleaded *autrefois acquit*, but the plea was rejected and on October 6, 1947 he was convicted in the alternative of committing either an offence contrary to section 177 or contrary to section 181 of the Penal Code and sentenced to six months rigorous imprisonment. Appellant then appealed to the High Court against both conviction and sentence and the learned Judge of that Court sitting at Penang exercised his power under section 306(3) of the Criminal Procedure Code to reserve the hearing of the appeal for a Court of three Judges.

Held: (1) in the absence of the sanction of the Public Prosecutor, the proceedings in the District Court on July 24, 1947 were null and void and consequently the appellant was never in peril on that day; (2) section 176 of the Criminal Procedure Code is phrased in broad terms

and clearly authorises alternative charges under different sections provided it is doubtful which offence the facts to be proved will constitute.

An illustration to a section cannot be used to restrict the plain and unambiguous wording of the section itself; it merely explains and does not qualify the section.

Cases referred to:—

- (1) *R. v. Bates* (1911) 1 K.B. 964.
- (2) *Mutha Moopan & Anor. v. R.* I.L.R. (1937) Mad. 664.
- (3) *Ramamoorthy v. Public Prosecutor* (1948) M.L.J. 43.
- (4) *Govindasamy v. Public Prosecutor* (1948) M.L.J. 46.
- (5) *Nehti Mandal & Ors. v. R.* A.I.R. 1940 Pat. 289.

CRIMINAL REFERENCE.

Pretheroe A.C.J. delivering the judgment of the Court set out the facts as reproduced in the head-note above and continued:—The appeal came before this Court on the 11th of June last.

The first ground of appeal was that the appellant had previously been tried on identically the same charges and that his plea of *autrefois acquit* should have been accepted by the District Court Judge. For the appellant Mr. Conaghan admitted that, as the District Court Judge had discontinued the trial and released the appellant, he was unable to produce an order of the Court to support either as plea of *autrefois acquit* or *autrefois convict*. He maintained however that the action of the District Court Judge had been illegal and that in the circumstances of the first trial he should have acquitted the appellant. It was not disputed that had the fiat of the Attorney-General been a pre-requisite to such trial the absence of such fiat would have deprived the Court of jurisdiction (*R. v. Bates*⁽¹⁾). Mr. Conaghan submitted, however, that the sanction required by section 139 of the Criminal Procedure Code is "less potent" than the fiat of the Attorney-General and that the absence of such sanction did not deprive the Court of jurisdiction and any proceeding of the Court in the absence of such sanction was merely an irregularity of procedure. In support of his submission Mr. Conaghan called in aid section 448(b) of the Criminal Procedure Code which provides that no finding, sentence or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account of ... "the want of any sanction required by section 139 of the Code". The latter part of the section qualifies the provision we have quoted, but it is certainly a strong argument to support the contention that want of sanction under